

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the matter of

Implementation of Section 302 of the  
Telecommunications Act of 1996

Open Video Systems

CS Docket No. 96-46

COMMENTS OF  
THE ASSOCIATION OF LOCAL TELEVISION STATIONS, INC.

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The following comments are submitted by the Association of Local Television Stations, Inc. ("ALTV"), in response to the Commission's *Notice of Proposed Rule Making* in the above-captioned proceeding.<sup>1</sup> ALTV is a non-profit, incorporated association of broadcast television stations unaffiliated with the ABC, CBS, or NBC television networks.<sup>2</sup> ALTV's member stations will be affected directly by the Commission's action in this proceeding.

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<sup>1</sup>FCC 96-99 (released March 11, 1996)[hereinafter cited as *Notice*].

<sup>2</sup>Local stations among ALTV's members include not only traditional independent stations, but also local television stations affiliated with the three emerging networks, Fox, UPN, and WB. As used herein, the term "local television stations" includes ALTV member stations, but excludes affiliates of ABC, CBS, and NBC.

[REDACTED]

From the perspective of local television stations, the heart of this proceeding is the Congressional directive to apply to open video system rules designed to maintain the integrity and vitality of this nation's system of over-the-air broadcasting. Congress contemplated that the must carry and retransmission consent, sports exclusivity, network nonduplication, and syndicated exclusivity rules apply to open video systems just as they apply to cable. This not only establishes a high degree of regulatory parity between cable and open video systems, but also assures that local television stations never will become the prey of open video systems (as they once were cable operators). No more should the public suffer a decline in broadcast television service at the hands of LECs (or non-LEC open video system operators, if permitted) than it should have as a result of the anticompetitive agendas of cable operators. In the Cable Act, Congress remedied the years of abusive cable conduct and decreed its cessation once and for all. In the 1996 Act, Congress now fairly and rightly has extended that decree to cable's wire-based competitors, open video systems.

At issue in this proceeding, therefore, is how to apply rules now applicable to cable systems to open video systems. In ALTV's view, the rules may be applied to open video systems in a direct and straightforward manner virtually identical to their application to cable systems. The Commission, of course, must examine whether technical and administrative differences between cable systems and open video systems require differences in application.<sup>3</sup> Indeed, ALTV is well aware that open video systems likely will have capabilities unknown to traditional cable systems. These advanced capabilities may require some variations in the mode of application. Such variations, however, must involve no compromise in the effectiveness of the rules. LECs and other parties positing implementation or application of the rules in a manner different from their application to cable systems ought bear a substantial burden of justifying such differential treatment

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<sup>3</sup>See, e.g., *Notice* at ¶59.

[REDACTED]

based on showings (1) that the technical distinctions are inherent and unavoidable and (2) that no dilution of effectiveness of the rules will result.

ALTV realizes that, at Congress's direction, the Commission is acting with what otherwise would be inordinate haste in pursuing completion of this proceeding within six months. Thus, the Commission hardly will have time for much more than a cursory review of matters which may be complex and uncertain. The regulations adopted herein will apply to systems which do not exist. Their architecture and functionalities are only beginning to emerge and undoubtedly will evolve and mutate as technology develops and systems are deployed and tested in the marketplace.<sup>4</sup>

This may compel the Commission generally to articulate more general rules and leave refinement and interpretation to the future on many issues. This "wait and see" approach, however, is neither necessary nor appropriate with respect to the specific rules which will govern the interrelationship of local television stations and open video systems. Those rules pre-exist this proceeding. They already apply to cable television systems. They have been subject to application and interpretation since 1992. They require nothing beyond the technical and administrative capabilities of any open video system operator. The Commission, therefore, should apply them to open video system in the same manner they apply to cable television systems.<sup>5</sup>

In particular, ALTV posits the following:

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<sup>4</sup>ALTV also is compelled to note that most non-LEC commenting parties suffer the same handicap -- the lack of a functional and accurate crystal ball, which would reveal the nature of the beast which Congress has directed the Commission to tame. ALTV, therefore, notes that it, too, may find it necessary to refine its views or raise new concerns as it gains knowledge of and experience with open video systems over time.

<sup>5</sup>At the same time, Commission also must realize that it may not be able to write new rules and close the book on these issues in this initial phase of this proceeding. After the rules are in effect, it must remain attentive, even vigilant, to the need to refine its rules. It must be wary of emerging open video system architectures and behavior which facilitate or effectuate anticompetitive harm to local television stations.

- The open video system should be responsible for assuring that must carry signals are available to all subscribers, even if they do not subscribe to a video program provider which carries the signals. Must carry signals, thus, would be part of the basic subscription to the open video system.
- Furthermore, all broadcast television signals must be accessible to subscribers on *every* menu presented to subscribers (whether provided by the open video system or a video program provider). Also, all broadcast signals, whether carried pursuant to must carry or retransmission consent, should be carried on distinct broadcast tier or grouped together in any menu or navigational system for program selection.
- Must carry stations should retain channel positioning options based on the options available on cable systems: (1) channel position (number) on most cable systems as of the date of enactment of the Act; (2) over-the-air channel; or (3) channel position mutually agreed to with the open video system operator. In cases where system architecture renders cable-like channel positioning obsolete, the open video system must make broadcast television stations available via navigational devices which assure easy, direct access to broadcast signals from any menu or mode of subscriber interface with the system's navigational devices.
- No channel capacity cap should apply. In the event supply exceeds demand, the law reserves one-third of capacity to the open video system or its affiliates. In such case, no reason exists to cap the number of channels available for must carry on either the analog or digital capacity of the open video system.
- The Act requires the FCC to apply the cable sports exclusivity, network nonduplication, and syndicated exclusivity rules to open video systems. With respect to implementation, ALTV urges that the open video system operator should bear the responsibility for compliance. Where an open video system includes more than one market, deletions must be limited to the particular area of local exclusivity involved.
- Channel sharing should be permitted only with the consent of the originating programmer. Thus, a station's signal could be carried on a shared channel only with the station's permission.
- The Commission should state that no unjust or unreasonable rate exists in cases where stations grant retransmission consent to an open video system in return for free or reduced rate carriage of another program service on the system. Reduced rates for carriage of local broadcast stations also should not be considered unjustly or unreasonably discriminatory.
- The anti-discrimination provision must be read broadly to apply to any communications to subscribers by an open video system, including billing inserts, on-screen program guides, etc. Similarly, the term navigational device, guide, or menu also should be read broadly to include any viewer interface for purposes of choosing a channel or service or selecting a program. This would include channel selection devices (set-top or remote), on-screen menus and program guides, etc. Subscriber access to station signals must be simple and direct from every menu at any level on the open video system.

- No on-screen or encoded program or channel identification information may be stripped from a signal. Stations must be considered "copyright holders" for purposes of identifying their signals.
- Open video system technical characteristics should reflect maximum commonality with broadcast ATV digital technical characteristics with respect to transmission, modulation, compression, and similar technical elements of their systems.
- Open video system operators should be required notify all local television stations of their intention to establish an open video system.
- The Commission ought require certifications to include documentation concerning broadcast signal carriage and that such documentation be sent to stations upon request. Certifications should be filed with the FCC at least 90 days prior to the open video system's commencement of operation.
- The FCC's existing must carry and cable complaint procedures should apply to carriage disputes involving broadcast stations, subject to the Act's 180 limit on dispute resolution. Other remedies should not be precluded.
- Finally, non-LB entities should not be permitted to operate as open video systems.

## **II. THE CURRENT MUST CARRY AND RETRANSMISSION CONSENT REQUIREMENTS SHOULD APPLY TO OPEN VIDEO SYSTEMS IN THE SAME MANNER THEY APPLY TO CABLE TELEVISION SYSTEMS.**

The Act requires the Commission to apply the must carry and retransmission consent requirements to open video systems.<sup>6</sup> Related provisions (1) require the Commission to maintain regulatory parity *vis-a-vis* cable systems in such cases where open video system and cable systems are subject to the same requirements;<sup>7</sup> and (2) prohibit an open video system from omitting any television broadcast signal carried on its system from any navigational device, guide, or menu.<sup>8</sup>

<sup>6</sup>Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, approved February 8, 1996, §65.3(c)(1)(B) [hereinafter cited as "the Act"]; Joint Explanatory Statement of the Committee of Conference at 59 [hereinafter cited as "CR"]

<sup>7</sup>Act, §65.3(c)(2)(A); CR at 6.

<sup>8</sup>Act, §65.3(b)(2); CR at 59.

ALTV submits that the must carry and retransmission consent requirements may be applied to open video system much as they to cable systems. Given the haste with which the Commission must act, the existing must carry rules adopted to implement Section 614 of the Cable Act should apply presumptively to open video systems. Those rules have been painstakingly developed and refined over a period of years now. Departure from these rules should be avoided absent the most compelling technical justification. Even where a precise fit may prove difficult, the goals and purposes of the must carry and retransmission consent requirements must be reflected in the rules applicable to open video systems.

First, as with cable systems, all must carry signals carried by open video systems should be available to all subscribers to the open video system.<sup>9</sup> This obligation should fall on the open video system operator, rather than on the particular video program provider which uses the open video system. This most easily assures that subscribers retain constant access to all broadcast television station signals carried on the system, regardless of which video program provider or providers the open video system subscriber has purchased. It also is the most efficient mechanism capacity-wise and avoids the complications inherent in channel sharing.<sup>10</sup>

Second, as with cable systems, all broadcast television station signals carried on an open video system (including retransmission consent stations) should be carried as a distinct tier or package, the signals of which are always available to all subscribers to the open video system. They should be grouped together in any menu or navigational system for program selection. This, again, directly reflects the manner of carriage of broadcast signals on cable systems. No apparent technical object exists to this form of broadcast signal carriage.

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<sup>9</sup>See 47 CFR §76.56(d).

<sup>10</sup>Notice at ¶35 *et seq.*



Third, must carry stations should retain channel positioning options akin to those on cable systems to the extent system architecture permits. ALTV proposes the following options:

- Over-the-air channel;
- Channel position on most cable systems as of the date of enactment (February 8, 1996); and
- Channel position mutually agreed to with the open video system operator.

This, again, preserves the parity between cable and open video systems. In cases where system architecture renders traditional channel positioning obsolete, the open video system must make broadcast television stations available via navigational devices which assure easy, direct access to broadcast signals from any menu or mode of subscriber interface with the system's navigational devices. Again, broadcast stations should be grouped together in any such system.

Fourth, all broadcast television signals must be accessible to subscribers on *every* menu presented to subscribers (whether provided by the open video system or a video program provider).<sup>11</sup> Once any menu appears on screen, no more than one action (*e.g.*, mouse click) should be required to return to the broadcast station category (if necessary) and/or one action to select the particular station desired. This is a maximum of two actions. For example, a remote control could have a "broadcast tv" button, which would immediately return the screen to a broadcast channel selection menu. Then the subscriber could select the particular channel he or she wished to see. Direct access via punching in a station's channel number also would satisfy this requirement. Similarly, on-screen menus which included a broadcast TV "button" that immediately called up the menu of available broadcast stations would comply.

To insulate video program providers' menus from this requirement would defy the statute and gut any channel positioning requirement of practical effect. Subscribers undoubtedly will spend much time watching programming provided by particular video program providers. If in so

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<sup>11</sup>Act, §653(b)(1)(E)(iv).

doing they are positioned a multiplicity of action steps from access to broadcast station signals, then the goal of the every-menu requirement of the Act -- to preserve ready access to broadcast signals -- will have been frustrated. Broadcast signals will have been functionally omitted from the menu. For example, a video program provider menu which first requires an action to exit the existing program, another action to return to the basic open video system menu, an additional step to select a broadcast station list, and yet one more action in order to gain access to a particular station hardly may be considered to comply with the "every menu" requirement.

ALTV cannot too strongly emphasize the significance of navigational devices, whether they be traditional remote controls, on-screen menus, or other new formats for system navigation, with respect to the availability of broadcast television stations to open video system subscribers. The history of screen bias in airline computer reservations systems, to say nothing of the channel shifting hijinks of cable operators pre-Cable Act, exemplifies the tendency of competitor-controlled navigational software and devices to favor the owner-competitor. The Commission must leave no doubt that such anti-competitive biases in open video system menus would violate the not only the anti-discrimination provisions of the Act, but also the broadcast station channel positioning requirements applicable to systems with more sophisticated channel and program selection mechanisms.

Access to local broadcast signals never ought be "buried" in a long script of subscriber actions. Beyond the obvious potential for anti-competitive conduct by open video system and video program providers, local broadcast stations are the primary locus of news and information in emergency situations. The public ought never be deprived of immediate access to local broadcast channels in such circumstances. Members of the public fumbling and stumbling through a menu maze looking for a local station's weather report as a tornado approaches is a scenario neither the Act, nor any public interest based policy could tolerate. Local television stations also continue to embrace their unique roles and responsibilities to their communities. Unlike any other

entertainment and information medium, local broadcast television stations are licensed to operate in the public interest. Congress, therefore, rightly insisted that they remain immediately accessible on open video system menu, guide, and navigational devices.

Fifth, as in the case of cable systems which overlap two markets, an open video system must assure that all must carry signals are available to all subscribers in their home markets.<sup>12</sup>

Sixth,, open video systems should be subject to the same requirements and procedures as cable operators, including

- Market-wide carriage (ADI or DMA, depending on the Commission's cable rules)/market modifications may be sought as under cable rules;
- Adequate signal strength;<sup>13</sup>
- Carriage of substantially duplicative stations not required/closest affiliate/duplicate must be carried
- Signals must be available to all subscribers and on all sets connected by the open video system or for which the open video system has provided the connection;
- Carriage of entire program schedule without material degradation required/comparable signal processing and quality;
- Triennial must carry/retransmission consent elections at same time cable elections are made;<sup>14</sup>

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<sup>12</sup>*Broadcast Signal Carriage*, 3 FCC Rcd 2965, 2975-76 (1993).

<sup>13</sup>With respect to adequate signal strength, the cable-based head-end concept may have to be replaced by a measurement point more suited to LEC architecture. In particular, we must avoid a measurement point which might be subject to abuse. For example, a LEC might feed its video from one central office to local systems throughout its extensive geographical service area. Bell Atlantic's "head-end" might be in Philadelphia. Obviously, stations in markets like Washington, D.C., and Pittsburgh would place no signal over Philadelphia. This should be no reason to except them from must carry in their respective local markets. Copyright reimbursement now is a thing of the past. The copyright law and the must carry definitions of local now correspond. 17 U.S.C§111(f).

<sup>14</sup>This is not to say that a station is required to treat co-located cable systems and open video systems in the same manner. Thus, whereas a station must make a consistent election with respect to two co-located cable systems, it would not be required to make the same election on an open video system co-located with a cable system. Nothing in the Act mandates such a requirement.

- Similar notice, complaint, and dispute resolution procedures, subject to the 180 limit on dispute resolution in the Act;<sup>15</sup>
- No compensation to open video systems for carriage of must carry signal, except costs of providing adequate signal, if necessary;
- VBI and other program-related material must be carried, as well as the primary video and audio portions of the signal.

No basis exists for treating open video systems differently versus cable television systems.

Eighth, when ATV is implemented, a station's ATV digital signal also will be subject to must carry and retransmission consent requirements. This simply conforms to the statutory provisions in the Cable Act and the mandate of parity between cable and open video systems.

### **III. THE CURRENT SPORTS, NETWORK, AND SYNDICATED PROGRAM EXCLUSIVITY RULES SHOULD APPLY TO OPEN VIDEO SYSTEMS IN THE SAME MANNER THEY APPLY TO CABLE TELEVISION SYSTEMS.**

The Act requires the FCC to apply the cable sports exclusivity, network nonduplication, and syndicated exclusivity rules to open video systems.<sup>16</sup> Only the details of implementation are at issue. ALTV takes the following positions on implementation:

First, the open video system operator should bear the responsibility for compliance.<sup>17</sup> Whereas open video systems may "delegate" the task of making the actual deletions to the respective video program providers on their systems, the Commission and affected broadcasters

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<sup>15</sup>As with the Cable Act, the Commission's open video system rules pose no bar to other judicial or administrative remedies available to local television stations injured by open video system behavior. Thus, a local broadcast television station damaged by anticompetitive conduct by an open video system operator would retain the right to sue for damages or injunctive relief in federal or state court. *See, e.g.,* Act, §613(a)(2).

<sup>16</sup>Act, §653(b)(1)(D).

<sup>17</sup>*See Notice* at ¶46.

would have only one place to turn to request and/or evaluate compliance. The open video system operator will retain control over the actual accessibility of broadcast signals and will be the only party with full knowledge about stations carried on the system. Furthermore, this approach not only centralizes responsibility but also simplifies compliance. Broadcast stations would provide notices to open video system operators just as they now do for cable television systems. One central switching point would perform the necessary deletions.

The alternative, relying on each individual video program provider to delete programming would complicate the process needlessly. Stations might be required to notify numerous video program providers, each of which might be carrying a different selection of broadcast signals subject to deletion. Just keeping track of which video program provider was carrying which signals would be difficult. Moreover, designating the open video system operator as the responsible entity avoids the complications in the case of shared channels. Again, the locus of responsibility resides solely with the open video system operator.

Second, open video systems should be required to maintain a list of all broadcast television stations carried by the open video system and any video program providers using the system and to provide a copy of the list on request by any broadcast television station. This is simply a reflection of similar existing requirements, to say nothing of a practical necessity if stations are to retain the ability to determine whether their exclusive program rights are in jeopardy. No particular burden would fall on the open video system operator because such records need be maintained in any event for other purposes.

Third, where an open video system includes more than one television market, program deletions must conform to the particular area of local exclusivity involved. In other words, the areas in which programs are deleted should be coterminous with the station's actual geographic exclusivity rights (as well as the area in which cable systems also would be required to delete the

same programming). The fact that open video system service areas may not reflect television market alignments should be no bar to precise compliance. Open video system configurations and architecture necessarily will allow for tailoring broadcast signal carriage and other services for local markets. Therefore, tailoring exclusivity deletions generally should be no more problematic.

## **IV. OTHER ISSUES**

### **A. Channel Sharing**

Channel sharing should be permitted only with the consent of the originating programmer. Thus, a station's signal could be carried on a shared channel only with the station's permission. The Act is permissive and in no way requires channel sharing.<sup>18</sup> Furthermore, to the extent broadcast signals are tiered or packaged for program selection purposes by open video system operators, the need for channel sharing is largely moot. They would be immediately accessible by viewers. Again, broadcast television stations would be readily accessible from any menu or via any navigational system whether provided by the open video system or any video program provider.

ALTV also is reluctant to endorse any right of an open video system operator to compel channel sharing because the architecture and functionalities of open video systems and the actual operation of channel sharing remain very much unknown. Therefore, stations should not be required to maintain their availability only via a shared channel.

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<sup>18</sup>Act, §653(b)(1)(c).

## **B. Rates**

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The Act imposes no absolute bar to discrimination in rates. Just and reasonable bases may exist for rate differentials.<sup>19</sup> In this regard, ALTV raises two concerns. First, the FCC should state that no unjust or unreasonable rate exists in cases where stations grant retransmission consent to an open video system in return for free or reduced rate carriage of another program service on the system. This has been a typical element of consideration in cable retransmission consent contracts. The possibility that such agreements might be considered unjustly or unreasonably discriminatory would tend to discourage them and reduce the efficacy of the retransmission consent provision. Furthermore, the agreement likely will be made in a context of a more competitive marketplace than has existed in the case of cable retransmission consent agreements. Open video systems are expected to operate as competitors to cable systems. This stands to be a vast improvement over the current marketplace in which stations still are faced with negotiating retransmission consent agreements with monopoly cable operators. Therefore, to the extent that "carriage for carriage" retransmission consent agreements might be considered to involve discrimination, the Commission should clarify at the outset that it falls outside the ban on unjust or unreasonable discrimination.

Second, because the constitutional challenge to must carry awaits a final decision, the Commission should be prepared to state that free carriage or reduced rates for carriage of local broadcast stations would not be considered unjustly or unreasonably discriminatory in the event the rules are held unconstitutional. As ALTV has stated, local television stations remain unique in their relationship to their audiences. They are licensed to operate in the public interest, rather than permitted to operate for purely commercial purposes. Indeed, some LECs already had stated that they would carry local television stations *gratis* on their video dialtone systems. In any case,

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<sup>19</sup>Act, §653(b)(1)(A).

carriage of local television stations, which are required to provide service responsive to their communities, never ought invoke the ban on unjust or unreasonable rates.

### **C. Information Provided to Subscribers**

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The Act prohibits an open video system from “unreasonably discriminating” in favor of its own or affiliated video program providers “with regard to material or information (including advertising) provided by the operator to subscribers for the purposes of selecting programming on the open video system, or in the way such material or information is presented to subscribers.”<sup>20</sup> The FCC also is directed to establish rules which ensure that video program providers and copyright owners are able “suitably and uniquely to identify their programming services to subscribers,” and, further, that an open video system operator will not change or alter such identification that is transmitted as part of the program signal.<sup>21</sup> The FCC also must adopt rules which prohibit an open video system from “omitting television broadcast stations or other unaffiliated video program services carried on such system from any navigational device, guide or menu.”<sup>22</sup>

In the wake of local television stations’ difficulties with cable systems prior to the 1992 Act, ALTV submits that the Commission should state at the outset that these provisions will be enforced strictly and broadly. Again, the Commission must erase any doubt that subscriber access to station signals must be simple and direct from every menu at any level on the open video

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<sup>20</sup>Act, §653(b)(1)(E)(i).

<sup>21</sup>Act, §653(b)(1)(E)(2) & (3).

<sup>22</sup>Act, §653(b)(1)(E)(4).



system. The Act would tolerate no less. It is direct and unambiguous. The Commission need only enforce it and should do so vigorously.

Second, this anti-discrimination provision must be read broadly to apply to any communications to subscribers by an open video system, including billing inserts, on-screen program guides, etc. Similarly the term navigational device, guide, or menu also should be read broadly to include any viewer interface for purposes of choosing a channel or selecting a program. This would include channel selection devices (set-top or remote), on-screen menus, and program guides, etc. The relative accessibility of a station's signal to a subscriber remains the most critical day-to-day concern of local television stations. As navigational systems become more sophisticated, the means of discrimination will become more subtle, but, nonetheless, damaging. Therefore, the Commission must declare now that local television stations never must be placed in a disadvantageous position *vis-a-vis* other program services with respect to subscriber communications of any kind.

The Act commands that no on-screen or encoded program or channel identification information may be stripped from a signal. The Commission must be adamant in its insistence that open video system operators comply with this provision. Brand identification has become increasingly significant as the number of program services has proliferated. The ability of a broadcast station or network to maintain its identity with viewers, consequently, is essential to its ability to compete effectively. Therefore, the Commission must apply this simple requirement without exception or dilution.

In this respect, ALTV reminds the Commission that local television stations must be considered "copyright holders" for purposes of identifying their entire program schedule. This is consistent with the Copyright Act,<sup>23</sup> under which a station's entire program schedule is a

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<sup>23</sup>cite

compilation for copyright purposes. Therefore, stations must be considered copyright holders for purposes of their own locally-produced programming and their entire program schedule.

#### **D. Technical Requirements**

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Open video system technical characteristics should reflect maximum commonality with broadcast ATV digital technical characteristics with respect to transmission, modulation, compression, and similar technical elements of their systems. If open video system technologies develop in ways which are incompatible with broadcast digital transmission techniques, then the ability of open video system to retransmit digital broadcast signals may be compromised. Few things could disserve the public interest more starkly. Digital television broadcasting will offer the public a new array of broadcast television services ranging from high-definition picture quality to multiple image and program channels. The concurrent development of open video systems should facilitate rather than stifle the new services digital broadcasting can provide.

#### **E. Notice**

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The FCC should require open video system operators to notify all local television stations of their intention to establish an open video system. This is necessary to assure that stations may make their must carry/retransmission consent elections.

#### **F. Certification Process**

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The Act requires open video system operators to file a certification with the FCC that they are in compliance with the rules. The FCC must approve or disapprove the certification within 10

days.<sup>24</sup> To properly monitor compliance with rules governing broadcast signal carriage, the Commission should require that the certification include documentation concerning broadcast signal carriage and that such documentation be sent to stations upon request. Furthermore, the Commission should require that certifications be filed at least 90 days prior to the open video system's commencement of operation. This would provide an opportunity for an open video system operator to remedy deficiencies found in its certification and still commence operation on time.

#### **G. Dispute Resolution**

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The Commission generally ought apply its existing must carry and cable complaint procedures for carriage disputes involving broadcast station, subject, however, to the Act's provision that disputes be resolved in 180 days.<sup>25</sup>

#### **H. Operation of Open Video Systems by Non-LECs**

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The FCC questions but appears to favor letting non-LEC entities, such as cable systems, become open video system operators. ALTV opposes letting non-LEC entities operate as open video systems. The Act does not so readily appear to permit non-LEC open video systems. The language of Section 653(a)(1) permits a cable system, for example, to provide video programming on an open video system. It says nothing to suggest that Congress contemplated a cable operator's converting a cable television system to an open video system. Furthermore, the Commission would be well-advised to use caution. The open video system concept is new and untried.

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<sup>24</sup>Act, §653(a)(1).

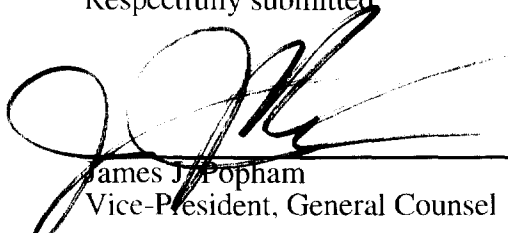
<sup>25</sup>Act, §653(a)(2).

Therefore, its use should be authorized within limits at least until such time as the Commission has had the opportunity to monitor and evaluate the actual operation of open video systems.

## V. CONCLUSION

Congress and the Commission, like local television broadcasters, have learned the hard way that combining ownership of content and conduit invites anticompetitive practices by the conduit owner. Neither the Congress, the Commission, nor local television stations has any desire to see a repeat of the experience with cable television. Therefore, Congress has adopted provisions in the Act to prevent this -- and to assure the proverbial level playing field as between cable systems and open video systems. ALTV urges the Commission to implement the Act faithfully and effectively in accord with the proposal advanced herein by ALTV.

Respectfully submitted

  
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